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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/617,629	07/11/2003	Gary Mitchell Davenport	P137	4265

27752 7590 08/24/2006

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EXAMINER

EBRAHIM, NABILA G

ART UNIT	PAPER NUMBER
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1618

DATE MAILED: 08/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/617,629	DAVENPORT ET AL.	
	Examiner	Art Unit	
	Nabila G. Ebrahim	1618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>11/17/03, 12/5/03</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

The receipt of Information Disclosure statements dated 11/17/03, and 12/5/03 is acknowledged.

Claims 1-30 are pending in the application

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claim 1, 5-30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim recites "high quality diet"; the term high quality is subjective and renders the claim vague because there is not known limits for being high moderate or low.
2. Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim recites, "ACTH levels in the dog are decreased". It is not clear if the ACTH is decreased in all the methods recited in claim 1 or in some of them. Furthermore, it is not clear if the Applicant means that the decreased level of ACTH levels in the dog is an indication to use the method or a result targeted by the method. For the purpose of examining the claims, Examiner will assume that the decrease of ACTH is the target for using one of the recited methods.
3. Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant

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regards as the invention. The claim recites, "cortisol levels in the dog are decreased". It is not clear if the cortisol is decreased in all the methods recited in claim 1 or in some of them. Furthermore, it is not clear if the Applicant means that the decreased level of cortisol levels in the dog is an indication to use the method or a result targeted by the method. For the purpose of examining the claims, Examiner will assume that the decrease of cortisol is the target for using one of the recited methods.

4. Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim recites, "HPA levels in the dog are decreased". It is not clear if the HPA is decreased in all the methods recited in claim 1 or in some of them. Furthermore, it is not clear if the Applicant means that the decreased level of HPA levels in the dog is an indication to use the method or a result targeted by the method. For the purpose of examining the claims, Examiner will assume that the decrease of HPA is the target of using one of the recited methods.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-5, 8-11, 17-19, 22-25, and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by Shields, Jr. et al US 6156355 (Shields).

Shields administer specific food formulation to dogs which comprises the following percentages compared to instant claim 5,

a minimum of CRUDE PROTEIN 22.0%

a minimum of CRUDE FAT 12.0%

a maximum of CRUDE FIBER 4.0% and

a maximum of MOISTURE of 10.0%

See table in col. 16, and examples.

Instant percentages recited in claims 5, 8, 13, 19, and 22 encompass the prior art percentages enclosed hereinabove. Regarding claim 27 the amounts of crude protein, fiber and fat encompass Shield's ingredients amounts. However, the moisture in the instant claims is increased to 60-90% weight, which is within the skills of an ordinary artisan to adjust since the diet recited in the claim is "a moist diet". The protein provided is of animal source (chicken), see abstract.

Note that the functional limitation of the method recited in claim 18 which comprises a single step of administering a composition to a dog for decreasing ACTH, HPA, or cortisol levels is considered inherent because the prior art compositions would be at least capable of performing said functions.

Conclusion: Claims 1-5, 8-11, 17-19, 22-25, and 30 are anticipated by Shields.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

1. Claims 1-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shields et al US 6,156,355 (Shields), in view of Ishihara et al 6,297,280 (Ishihara).

Shields administer specific food formulation to dogs which comprises the following percentages compared to instant claim 5,

a minimum of CRUDE PROTEIN 22.0% (instant percentage is 5-50%),

a minimum of CRUDE FAT 12.0% (instant percentage is 0.5-25%),

a maximum of CRUDE FIBER 4.0% (instant percentage is 1-10%) and

a maximum of MOISTURE of 10.0% (instant percentage is 1-30%), See table in col. 16, which percentages is overlapping or encompassed by percentages recited in instant claims 5, 8, 13, 19, and 22. regarding claim 27 the amounts of crude protein, fiber and fat encompass Shield's ingredients amounts. However, the moisture in the instant claims is increased to 60-90% weight, which is within the skills of an ordinary

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artisan to adjust since the diet recited in the claim is "a moist diet". Also Shields disclose the use of taurine in an amount of 0.05% in examples 4, and 7. Instant claim 27 recites taurine in a minimum amount of 0.001- 5.0% weight. The protein provided is of animal source (chicken), see abstract.

The formulation further comprises omega-3 fatty acids in amounts of at least 0.3% (Examples 1-3) and at least 0.4% (Example 4) to dogs (column 3, line 38; column 4, lines 8- 25) and the dog food of Shields is intended for oral administration to the canine as the food is consumed by way of oral route. 0.3% and 0.4% are both greater than 0.2 weight percent called for by the generic claims 12, 14, 15, 21, 26, 28, and 29. It is known that omega-3 fatty acids are sources of eicosapentaenoic acid (EPA) and docosahexaenoic acid (DHA), see column 4, lines 3-19 of US 5,709,855 as a reference that shows that eicosapentaenoic acid (EPA) and docosahexaenoic acid (DHA) are omega-3 fatty acids. No specific form of administration is taught by the instant claims. However, the dog food market is well aware of the two types claimed in this application, the dry (like treats), and the moist (like food cans).

Note that instant claims 2-4

Shields is deficient is disclosing the use of his ingredients in improving anxiety symptoms in dogs.

Ishihara teaches the use of eicosapentaenoic acid (EPA) and docosahexaenoic acid (DHA) (col. 3, lines 1-9) and other ingredients for suppressing behavior problems of pets (abstract). Ishihara specifies the behavioral problems of pets to comprise separation anxiety (col. 3, lines 51-55) which is the problem treated by the instant

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application as (adaptation of a dog to an animal shelter, moderating the behavior of a dog living in an animal shelter, increasing the rate of successful adoption of a dog living in an animal shelter, decreasing anxiety in a dog, and combinations thereof)

It would have been obvious to one of ordinary skills in the art to use the dog food disclosed by Shields to ameliorate the separation anxiety symptoms of a dog because Ishihara disclosed that these compounds are useful in treating dogs having anxiety. The expected result would be a dog food that is made of protein, carbohydrate, fat, fiber, DHA, and EPA and moisture, which is used to improve the behavior of a dog having anxiety problems.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nabila G. Ebrahim whose telephone number is 571-272-8151. The examiner can normally be reached on 8:00AM-5:00PM.

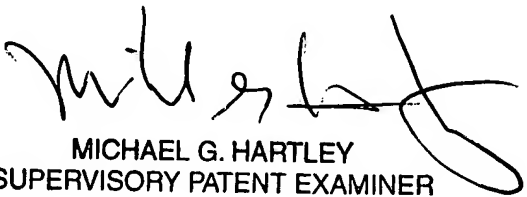
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hartley can be reached on 571-272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Nabila Ebrahim

8/16/06



MICHAEL G. HARTLEY
SUPERVISORY PATENT EXAMINER